

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. S-2626

**PETITION OF COMMUNITY SERVICES
FOR AUTISTIC ADULTS AND CHILDREN (CSAAC)**

OPINION OF THE BOARD

(Opinion Adopted May 4, 2005)

(Effective Date of Resolution: May 13, 2005)

Case No. S-2626 is an application for a special exception pursuant to Section 59-G-2.19 (Educational Institution, Private) of the Zoning Ordinance to permit: 1) Services to autistic children between the ages of 2 and 21; 2) An increase in enrollment from 45 to 75 students. On a given day as per the current enrollment there will be 24 students at the school and not more than 48 staff; 3) Regular educational services and special clinics for students; 4) Diagnostic services for younger children; 5) Hours of operation from Monday through Friday, 9:30 am to 4:00 p.m. Faculty and other employees of the school will be on the premises between the hours of 8:30 am and 6:00 p.m. 6) The Summer program; which would not exceed 20 children and 9 staff; There are occasional evening or weekend meetings, programs or services; 7) The main building and three out buildings providing primary and related uses associated with the proposed school. 8) A nature trail around the perimeter of the property and play areas. 9) Additional parking.

The subject property is Lot A, Zion Center Subdivision, located at 21515 Zion Road, Brookeville, Maryland, 20833, in the RDT Zone.

On February 7, 2005, the Hearing Examiner convened a hearing on the application, and on March 21, 2005, issued a Report and Recommendation for approval of the special exception. The Board of Appeals initially considered the Report and Recommendation at its Worksession on April 6, 2005, and remanded the case to the Hearing Examiner on April 28, 2005, for clarification of the boundaries of the special exception neighborhood. The Hearing Examiner issued a supplemental Report and Recommendation on May 2, 2005, which the Board considered in a Worksession on May 4, 2005.

Decision of the Board:

Special Exception **Granted** Subject
To the Conditions Enumerated Below.

After careful consideration and review of the record in the case, the Board adopts the Hearing Examiners Reports and Recommendations and grants the special exception, subject to the conditions enumerated below:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. Enrollment at subject site shall not exceed seventy-five students, and their ages, in general, shall range between two and twenty-one years.
3. The number of employees and staff assigned to the subject site shall not exceed forty-eight.
4. The hours for educational activities are restricted to 9:30 a.m. through 4:00 p.m., Monday through Friday; however, occasional evening or weekend meetings, primarily involving the PTA, the PTO or other related programs and/or services, are permitted. These meetings reportedly average one per month.
5. Faculty and other employees of the school may be on the premises between the hours of 8:30 a.m. and 6:30 p.m., Monday through Friday, as well as for occasional evening or weekend functions.
6. The site shall be limited to the current level of impervious surface, as shown on the Site Plan, Exhibit 20(a).
7. Petitioner shall add and maintain the new shade trees depicted on the revised Landscape Plan (Exhibit 20(b)) and the revised Shading Plan (Exhibit 20(c)).
8. Petitioner shall obtain a permit for its four foot by eight foot illuminated entrance sign, or for a substitute sign, if one is required by the Sign Review Board or the Department of Permitting Services.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, and Donna L. Barron necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 13th day of May, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF:

**COMMUNITY SERVICES FOR AUTISTIC
ADULTS AND CHILDREN (CSAAC)**

Petitioner

Edward Papazian

Kathryn Roland

Ian Paregol

Brian J. Donnelly

For the Petitioner

S-2626

C. Robert Dalrymple, Esquire

05-16)

Attorney for the Petitioner

Martin Klauber, Esquire, People's Counsel

In Support of the Petition

Before: Martin L. Grossman, Hearing Examiner

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**HEARING EXAMINER'S REPORT AND RECOMMENDATION
TABLE OF CONTENTS**

	Page No.
I. STATEMENT OF THE CASE	6
A. Description of CSAAC.....	7
B. The Subject Property And Surrounding Neighborhood	7
C. Proposed Use	10
D. The Master Plan.....	12
E. The Environment, Landscaping and Lighting	13
F. Traffic Management and Safety.....	15
G. Community Concerns.....	15
III. SUMMARY OF THE HEARING	15
A. Petitioner's Case.....	15
B. People's Counsel.....	21
IV. FINDINGS AND CONCLUSIONS.....	21
A. Standard for Evaluation.....	22
B. Applying the Standard to the Requested Use	22
C. General Standards	23
D. Specific Standards: Educational Institutions, Private.....	27
E. Additional Applicable Standards.....	33

V. RECOMMENDATIONS..... 36

I. STATEMENT OF THE CASE

On October 1, 2004, Petitioner, Community Services for Autistic Adults and Children (CSAAC), filed Petition S-2626, OZAH #05-16, for a Private Educational Institution Special Exception under Code §59-G-2.19 to allow continued use by private owners of a facility that has been owned by the State of Maryland, and therefore did not require a special exception. Petitioner currently leases the property from the State of Maryland, and has a contract to purchase the property which is contingent, *inter alia*, upon CSAAC obtaining this special exception. Exhibit 10(b).

Petitioner's application seeks authorization to have up to 48 staff and an enrollment of up to 75 autistic students, ages 2 through 21, though that number would not be on the campus at any one time. The subject site is located at 21515 Zion Road in the Brookville area of Northern Olney. The 9.73 acre site is zoned RDT (Rural Density Transfer).¹ Petitioner's efforts to take over operation of this site are supported both by Montgomery County Executive, Douglas M. Duncan (Exhibit 12(b)) and by Montgomery County's Department of Health and Human Services (Exhibit 12(a)).

On October 28, 2004, the Board noticed a hearing in S-2626 for February 7, 2005, at 9:30 a.m., in the Stella B. Werner Council Office Building (Exhibit 14(b)). On January 21, 2005, the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) filed its Report (Exhibit 19),² which recommended approval of the Petition, with conditions. Those recommended conditions were amended by Technical Staff on January 27, 2005 (Exhibit 23), eliminating the proposed 5th condition. On January 27, 2005, the Planning Board voted unanimously to recommend approval, with same conditions as the amended conditions suggested by Technical Staff (Exhibit 29).

By letter dated January 31, 2005, (Exhibit 20), Petitioner filed a motion to amend the Petition to

¹ Zoning Text Amendment No. 03-07 was enacted by Ordinance No. 15-08, effective July 21, 2003, to enable location of this type of facility in the RDT Zone.

² The Technical Staff Report is frequently quoted and paraphrased herein.

file revised Site, Landscape and Shading Plans (Exhibits 20(a), (b) and (c), respectively). That motion was announced on February 7, 2005 at the public hearing (Tr. 6), which went forward as scheduled and was completed on the same date, and the record was held open until February 17, 2005 to receive any comment or opposition, pursuant to Zoning Ordinance §59-A-4.24. Given that no opposition was filed, that motion to amend the Petition is deemed granted. Following the hearing, Petitioner notified the Hearing Examiner (Exhibit 30) that it was unable to locate any record of a sign permit for the 8 foot by 4 foot illuminated entrance sign (Exhibit 13(c)), and suggested that obtaining a sign permit be made a condition of the special exception.

No opposition witnesses appeared at the hearing, and the record closed, as scheduled on February 17, 2005.

II. FACTUAL BACKGROUND

A. Description of CSAAC

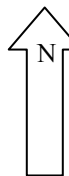
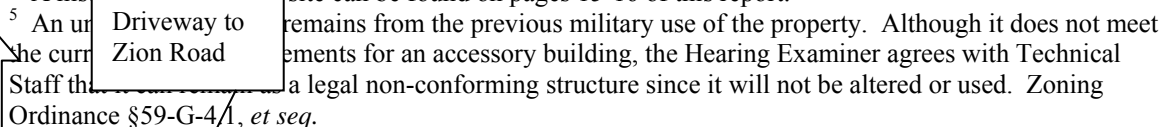
CSAAC is “a non-profit Montgomery County service provider . . .” Exhibit 3(a). CSAAC’s background and function were described by its Chief Financial Officer, Kathryn Roland, at the hearing:

[CSAAC] was founded in 1979 by parents of then transitioning youth, of children that were aging out of the school system, who had autism, and the parents found that there were very little options for services, for adult services for their children. In fact, at that point in time, basically, the options were institutionalization. They were obviously not for that and they decided to provide an established community based services for adults with autism. So our program started out as an adult program. Over the years, as . . . the agency grew, we then developed our educational services, . . . to complement the adult services. We started out providing educational services for older students, but as the years went by, we learned of an exciting new intervention for very young students with autism. So we've expanded again and now we serve students from ages two through 21, and then adults through their life span. Tr. 31-32

In supporting CSAAC’s takeover of the subject facility, County Executive Douglas Duncan stated that the organization “has been a distinguished and capable provider of services for our adults and children with autism for many years and would be a very sensible choice to keep the property in service to a very deserving population.” Exhibit 12(b).

B. The Subject Property and Surrounding Neighborhood

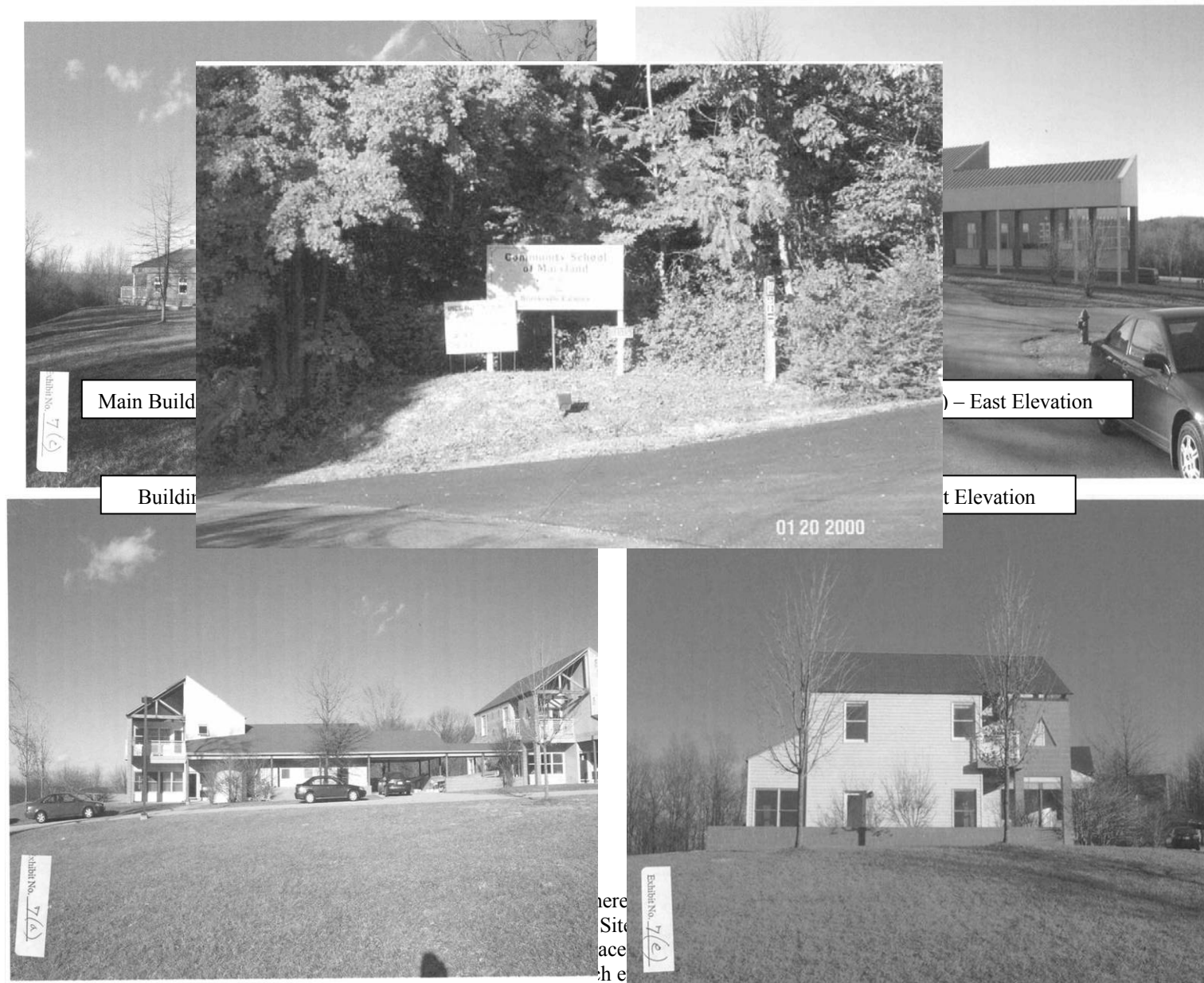
The subject property is improved with four existing primary structures, a main building and three “out” buildings, which will be utilized by Petitioner for the requested use.⁵ Together, they contain a total floor area of about 33,140 square feet. In addition, there is an



existing picnic shelter which is directly across from the Main Building, and 76 parking spaces are distributed throughout the campus.⁶ There are approximately 1.8 acres of forest on site's the perimeter. These features can be seen on a portion of the Rendered Landscape Plan (Exhibit 25) which was introduced at the hearing.

Some photographs of the buildings give a sense of the campus. The first two (Exhibits 7(c) and (d)) depict different views of the main building, which was designated Building "A" during the hearing. Tr. 83-87. The second two (Exhibits 7(a) and (e)) depict different views of Building "B," the "Out" building closest to the main building.

There is an 8 foot by 4 foot illuminated sign (Exhibit 13(c)) located at the entrance to Petitioner's driveway. It is depicted below, along with the Special Exception notice sign:



Petitioner notified the Hearing Examiner (Exhibit 30) that it was unable to locate any record of a sign permit for the sign and suggested that obtaining a sign permit be made a condition of the special exception, if granted. The Hearing Examiner agrees, and that condition is recommended in Part V of this report. Zoning Ordinance §59-F-4.2(d)(3) permits an illuminated Entrance Sign, not exceeding 40 square feet, in a rural zone.

C. Proposed Use

The subject Petition seeks authorization to continue to operate a private educational institution for autistic individuals, ages 2 through 21, at the subject site following its acquisition from the State of Maryland pursuant to a purchase contract between Maryland and CSAAC. Exhibit 10(b). The school currently serves between 43 and 45 students, and has about 36 employees. If the Petition is granted, enrollment would be capped at 75 students, although fewer than that number would be on campus at any one time. Staff would be limited to 48.

Petitioner described its proposed school operations in Exhibit 3(a):

The Proposed School to be operated by CSAAC on the Property is comprised of a private educational facility to provide educational services to autistic children between the ages of 2 and 21. The Proposed School is one of three schools operated by CSAAC through the Community School of Maryland, a licensed, private educational facility approved as such by the Maryland State Department of Education. All students served by the Proposed School are referred to the Proposed School by local educational agencies or Medicaid via the Autism Waiver; accordingly the operation of the Proposed School at this location is providing a quasi-public purpose as it is an extension of educational services provided at the direction and partial funding of the public school systems or the Medicaid system.

* * *

The Proposed School currently has a total population of 45 students, although CSAAC desires the flexibility to serve up to 75 students In addition to regular educational services and special clinics for students, CSAAC has special activities on the Property geared to integrate typical and disabled children so as to encourage social skill development. Diagnostic services also occur on the Property for younger children identified as displaying characteristics typical of those on the autism spectrum. Predictably, staffing for the Proposed School is fairly intensive, with the need for adequate teachers, teacher aides and specialists to provide the necessary services for a private educational institution of this nature. Existing full time employees include: a principal (program director), an educational director, an administrative assistant, an activities coordinator, 5 teachers and 20-25 teacher assistants, two speech/language pathologists and an occupational therapist.

In addition to the regular school day activities on the Property, CSAAC operates the Center for Autism and Pervasive Developmental Disabilities (“CAPDD”) as part of its Community School of Maryland. This part-time

program provides Intensive Early Intervention (“IEI”) services to children aged 2 to 6. On a part-time basis, CSAAC psychologists and direct care staff meet with parents and students in an effort to educate parents on ways to utilize behavior plans and Lovaas Discrete Trial teaching so that students can meet County-recommended educational goals. Weekly social skills groups involving up to five students at a time, provide interactive programs for autistic children. To this end, there are typically ten (10) itinerant teachers and supporting direct care staff who provide services for children for these components of the IEI program.

In sum, the total number of educational professionals and staff on a given day utilizing the current enrollment of 24 students at the school and no more than 2 clinics operating concurrently in the CAPPD program would not exceed 48 persons – 36 staff from the school and 12 staff from the CAPDD program. . . . [D]uring the bulk of the day at the CAPPD program, no more than five (5) employees are on site at any given time. The CAPPD program currently has an enrollment of 29 students, but because this is an in-home service, the students do not attend the program at the same time. Further, the size of the school building limits the total enrollment for the Community School of Maryland; however, CSAAC desires to create a summer program where children with autism can develop relationships with non-disabled peers. Such a program would not exceed 20 children and 9 staff members. Consequently, enrollment allowances have been made for those potential students.

The typical hours of operation for the Proposed School are Monday through Friday, 9:30 a.m. to 4:00 p.m. Faculty and other employees of the school are usually on the premises between the hours of 8:30 a.m. and 6:00 p.m. There are occasional evening or weekend meetings, primarily related to PTA for other related types of programs and/or services. Other ancillary programs provided on the Property (and which require some additional staffing) include occupational therapy (no more than two persons at a time) and speech and language services (no more than two additional persons).

The diagram portion of the revised Site Plan (Exhibit 20(a)) is shown below, and an expanded version is shown on the next page.

In addition to the four existing buildings, which house classrooms, ancillary service spaces, support service spaces, administration and related recreational amenities (including a covered picnic area – building in progress), CSAAC desires to further improve the subject property with a nature trail around the perimeter of the site and future play areas, as shown a blow-up of the Site Plan (Exhibit 20(a)), below.

D. The Master Plan

The property at issue is subject to the *Olney Master Plan*, approved and adopted in June 1980. As noted by Technical Staff, the *Olney Master Plan* supports the existing RDT zoning and allows special exceptions, such as the proposed use, in the zone. The key goal of the Plan in this rural area is preserving farmland. Page 33. Continuing the use of the subject institution for autistic children will do nothing to threaten the

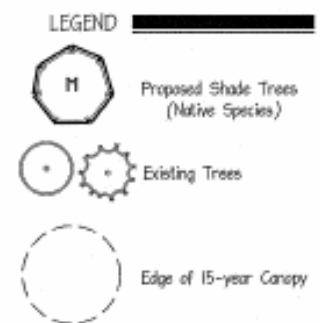


surrounding agricultural and park areas; nor will it adversely impact the few residences in the general vicinity. As stated by Technical Staff, “this location, somewhat removed from residential uses, is appropriate, and the weekday hours, enclosed play area, and site design further enhance compatibility of the use at this site.” The Hearing Examiner agrees. The proposed continuation of the current use is consistent with the applicable Master Plan.

E. The Environment, Landscaping and Lighting

The subject property, although in the Patuxent watershed, is not within a Special Protection Area; nor is it subject to a Tree Save Plan. Exhibit 5. Since Petitioner will make use of the existing buildings and parking areas, no forest will be removed and no sensitive areas will be disturbed. According to Environmental Planning Staff of the M-NCPPC, the site has been granted an exemption from forest conservation requirements due to the fact that it is an existing use, requiring no subdivision and no removal of existing forest.

However, because the level of imperviousness is approximately 17.5%, which is higher than the 10% usually acceptable in this area, Technical Staff determined that shade trees should be incorporated into the proposal to reduce thermal load on the asphalt surface, which will, in turn, reduce runoff water temperature and improve water quality. Petitioner revised the Landscape Plan (Exhibit 20(b)) and produced a Shading Plan (Exhibit 20(c) to



include this recommendation, as can be seen on the portion of the Shading Plan shown below:

the residential zone limit is not directly applicable in the RDT Zone, it is a useful guide considering the proximity of a few homes just to the south of the pipe-stem driveway.

F. Traffic Management and Safety

Petitioner's transportation engineer, Edward Papazian, determined that the use would not generate the 30 peak hour trips necessary to generate the need for a traffic study under the Local Area Transportation Review (LATR), mostly because a large portion of the children and staff arrive together each day on four vans run by CSAAC. See, Exhibit 11 and Tr. 24-29. Some arrive on County School busses and others travel outside the peak hours. Even with the proposed increase in student enrollment, traffic generated by the use during peak hours will be low because most of the additional children will be added in the middle of the day. Tr. 25-27. Transportation Planning Staff agreed with this assessment, finding "no adverse effect on the transportation system," and the Hearing Examiner thus concludes that LATR has been satisfied.

Transportation Staff also found that the site has good access, circulation and adequate parking (even though it assumed only 51 spaces, while the Site Plan calls for 76). Mr. Papazian noted that the activity levels are low in this school, unlike the "massive volumes of traffic that may be going in and out . . . [of] a typical school." He therefore concluded, "Based upon our examination of the area and based upon the operations of this facility, . . . the access system and the internal circulation system will operate in a safe and efficient manner." Tr. 29.

G. Community Concerns

There has been no community opposition to the special exception sought by Petitioner. Letters of support for the Petitioner were filed by Douglas M. Duncan, Montgomery County Executive (Exhibit 12(b)) and by Montgomery County's Department of Health and Human Services (Exhibit 12(a)).

Martin Klauber, the People's Counsel, summed up his position by saying that "this is so obviously in the public interest of Montgomery County and its residents that it's just redundant for anybody to add anything, . . . and I fully support this special exception and recommend that it be granted with the conditions stated in the Technical Staff Report." Tr. 90-91.

III. SUMMARY OF THE HEARING

The hearing took place on February 7, 2005, as scheduled.

A. Petitioner's Case

Petitioner called four witnesses at the hearing: Edward Papazian, an expert in traffic and transportation engineering Kathryn Roland, Petitioner's Chief Financial Officer, Ian Paregol, Petitioner's Director of Educational Programs, and Brian Donnelly, an expert in land planning and site design.

At the beginning of the hearing, the history of the subject site was related by Petitioner's attorney, C. Robert Dalrymple, (Tr. 12-17), and the accuracy of his recitation was later confirmed by sworn witnesses, Kathryn Roland and Ian Paregol. Tr. 46-47.

Mr. Dalrymple gave the following history of the site:

. . . This site was used and was part of the federal government's Nike Missile Program. It was a Nike Missile site from World War II through the 1960's, and when that program was phased out and they were in the mode of

needing to dispose of these sites, they were looking around for other potential public uses or quasi-public uses, to put the various sites.

This site was identified by the Department of Health, Education and Welfare as being a site that would be appropriate for an organization called the America Foundation for Autistic Children, or AFAC. . . . This was quitclaim deeded to AFAC as a public benefit provider, again, under the guise of the Department of Health, Education and Welfare. And there was a deed restriction, which is also part of the record, which indicates that this is the type of use that this property should have post-Nike Missile days, and that if for some reason AFAC were to no longer be using it for that purpose, that the property should continue to be used for a similar type purpose. Or else presumably, it would go back into the Federal government's disposition program.

AFAC ran into some significant funding issues over the period of time, while they had great goals in admissions and desires, they did run into funding issues. They were supported through some public funds, but they were largely supported at a period . . . of great need by Mr. Abe Pollin, . . . a tremendous philanthropic contributor in this area, and he did contribute his own funds to help fund AFAC to continue this quasi-public use to continue in its mission.

Some three years ago, or perhaps greater than that now, AFAC ceased its operations . . . And the use itself started foundering and it was no longer a viable use. Since Mr. Pollin had financed a lot of the operations out there, he did have deeds of trust on the property and he took the property back . . . when the debt was no longer able to be taken care of by AFAC.

Once Mr. Pollin ended up with the property, he along with the state government and the local governments and the local educational agencies, started looking for another type of use that would fit the bill that AFAC put the property to use after acquiring it from the Federal Government. The state and the local government were well aware of the operations of CSAAC and their community school in Maryland, and their active need for another school to continue in its, in their service.

So CSAAC was essentially hand picked by the State Department of Health and Human Services, with the assistance of County Executive Duncan and several others, who asked CSAAC if they would be interested in coming to this location to operate one of its schools. The only problem that we had with that was that CSAAC could not acquire the land at that time because the use itself is a private educational institution, was not a permissible use either by right or by special exception, in the RDT Zone.

Again, with tremendous assistance from the state and the governor and county executive, and several others, it was arranged for the state to

acquire the land and to then lease the property to CSAAC to allow CSAAC to commence immediate operations of its, of its school facility, under the provisions of the zoning ordinance, I think there's a general provision allowing public uses on, or allowing uses on public land.

There's also a specific provision within the special exception provisions of Section 59-G-2.19 that also permit private educational institutions to operate on, as permitted, by right uses on land owned by the State of Maryland. So under this set up and situation, CSAAC commenced operations as a lessee of the property and as a contract purchaser of the land, with the contingency on the contract being that we would pursue with due diligence and best efforts, an amendment to the code to permit CSAAC to outright buy the land to continue its operations.

Should CSAAC not be successful in its endeavor to get a special exception use and to acquire the land, the, the lease and the contract purchase will terminate and we'll be back in the mode of trying to find an appropriate user. . . .

. . . [T]here was a text amendment that was passed by the District Council . . . that would permit a private educational institutional in the RDT Zone under very limited circumstances. . . .

CSAAC was commencing operations at the time, but they found the property to be in, in very much a state of disrepair, and in need of significant improvements in order to make it a compatible environment for the teachers to teach and for the children to learn. Through some public monies, Montgomery County grant money and through some private finances, there were improvements that were made . . . that bring us up to today, . . . where the site is operating quite nicely, for the intended purpose of providing a, a suitable learning environment for the, for the autistic children.

1. Edward Papazian:

Edward Papazian testified as an expert in transportation engineering. Mr. Papazian stated that there are approximately 24 students who attend class on a daily basis, and they arrive in four vans, accompanied by teaching assistants. He determined that the use would not generate the 30 peak hour trips necessary to generate the need for a traffic study under the Local Area Transportation Review (LATR), mostly because a large portion of the children and staff arrive together each day on the four vans run by CSAAC. See, Exhibit 11 and Tr. 24-29. Some arrive on County School busses and others travel outside the peak hours.

Even with the proposed increase in student enrollment, traffic generated by the use during peak hours will be low because most of the additional children will be added in the middle of the day. Tr. 25-27. Mr. Papazian noted that the activity levels are low in this school, unlike the "massive volumes of traffic that may be going in and out . . . [of]

a typical school.” He therefore concluded, “Based upon our examination of the area and based upon the operations of this facility, . . . the access system and the internal circulation system will operate in a safe and efficient manner.” Tr. 29. He stated that there would be no adverse effect on the surrounding transportation system, and that Transportation Staff of the M-NCPPC agreed with his conclusions. Tr. 28.

Mr. Papazian also testified that possible summer programming would be similar to non-summer levels, and he would therefore not expect a significant variation in the traffic situation. Tr. 27.

2. Kathryn Roland:

Kathryn Roland, testified that she is Petitioner’s Chief Financial Officer, and has functioned over the years as an Assistant Executive Director. She has been involved in this project from the beginning. Tr. 30-31.

Ms. Roland, described the history and mission of CSAAC (Tr. 31-32): [CSAAC] was founded in 1979 by parents of then transitioning youth, of children that were aging out of the school system, who had autism, and the parents found that there were very little options for services, for adult services for their children. In fact, at that point in time, basically, the options were institutionalization. They were obviously not for that and they decided to provide an established community based services for adults with autism. So our program started out as an adult program. Over the years, as . . . the agency grew, we then developed our educational services, . . . to complement the adult services. We started out providing educational services for older students, but as the years went by, we learned of an exciting new intervention for very young students with autism. So we've expanded again and now we serve students from ages two through 21, and then adults through their life span.

She also testified that the subject site is used for CSAAC’s educational services for autistic children. The Main Building, labeled “A” on Exhibit 25, houses six small classrooms, a library, an all-purpose room for recreation, a kitchen area and a lunch room. The operation is a day school, and the children arrive by van or bus, with classes running from 9:30 a.m. to 3:30 p.m. Tr. 32-33. There is no adult education at this facility. Ages of students run from 2 through 21.

In Building “B,” CSAAC provides intensive early intervention services. These are services for children ages two through seven. They're primarily home based services, so most of the activity actually occurs in the student's home. However, once a week, the team gets together and has a therapy session with the psychologist, who is the head of the team, and they review the progress that the child is making, deciding on what the next step is going to be to help the child progress. Those meetings will occur in Building “B” throughout the day, although there are never more than two students in this facility at one time. There is a therapy room set up on the lower level and one set up on the upper level. Throughout the day, people will come and go between the hours of 9:30 and 4:00.

Building “C” houses support therapies, such as occupational therapy, speech therapy and music therapy. Building “D” is still being fixed up. Tr. 34-36. The picnic shelter is outside Building “A,” so the children can eat outdoors on nice days.

Ms. Roland testified that the capacity in Building “A” is 24 students, housed in six classrooms, each with a teacher. Nineteen students participate in that program. For Building B, there are 18 students enrolled in the intensive early intervention program, but only two will actually be at that building at any given point in time. Tr. 37. The number fluctuates from year to year.

The administrative head of the school, a receptionist and one other administrator are located in Building B. There is a psychologist for each of the teams, and numbers of additional staff depend on what ratio the particular student requires, whether it's a one to one ratio or a one to two ratio. The aides ride in the vans with the students from residential homes and arrive at school with them. The school day starts at 9:30 in the morning and it ends at 3:30 in the afternoon, Monday through Friday, year round. There are no weekend hours. There are occasional evening events, at which the Parent Teacher Organization (PTO) meets. Tr. 38-39.

Ms. Roland further testified that this site is ideal for CSAAC's students because it is open, but safe; it's back from the main road, and it's contained. “So our students can enjoy . . . running in the field . . . and playing out there.” Tr. 41. CSAAC is contemplating a nature trail going around the border of the property, something that would be interactive and an educational experience for the students.

Ms. Roland stated that she was familiar with Technical Staff's conditions of approval for the special exception and was prepared to accept them.⁷ Tr. 42.

CSAAC is requesting approval of 75 students and 48 staff, maximum, though it would be highly unlikely to have them all present at any one point in time. Tr. 43. On a typical day now, there are 26 students on site at any given time. Tr. 44. CSAAC would like to have a summer enrichment program, but the total number of students would still not exceed 75. Tr. 43.

Finally, Ms. Roland testified that Mr. Dalrymple's historical summary of the subject site at the beginning of the hearing was thorough and accurate. Tr. 46-47.

3. Ian Paregol:

Ian Paregol testified that he oversees the educational programs for CSAAC. He stated that Mr. Dalrymple's recitation of the subject site's history was accurate.

He noted that in addition to the 26 students on site, there would likely be 26 teachers and staff on site at any one time. Tr. 46. The PTO is for parents of the younger children and there is also a PTA (Parent Teacher Association) for the older children's parents. Usually, one evening meeting per month is held on the site by these organizations. Tr. 48.

Mr. Paregol testified that the doors open at 8:30 a.m. for staff, and most of the staff leaves by 4:30, but he sometimes stays till 6:30 p.m. Students are usually present from 9:30 a.m. to 3:30 p.m. Tr. 49-50.

Mr. Paregol identified a photograph of the illuminated entrance sign, Exhibit 26, and testified that was the only sign, and there have been no complaints from neighbors about it. Tr. 49-52. The campus lights are on a timer and do not stay on all night. Tr. 52.

⁷ It should be noted that these conditions were modified by Technical Staff prior to the Planning Board review on January 27, 2005. Tr. 17-19. That modification dropped the 5th condition, which had called for a “resource management plan.” This change was based on Petitioner's agreement to provide shade trees to reduce heat loading on the impervious surfaces. That agreement is reflected in the Landscape and Shading plans. See Part II.E. of this report. Petitioner also agreed to restrict mowing on part of the subject property, as reflected in the Site Plan.

According to Mr. Paregol, the CSAAC vans used to transport the children would park in the larger area to the south of all the buildings, which is marked with circled numbers "18" and "22" on the Site Plan. Other staff would park near the area marked with a circled "10." These are the primary parking areas. Tr. 76-77.

When there is an evening meeting of the PTA/PTO, that meeting would normally be held in Building A or Building B, depending on which program was involved. About 10 to 14 parking spaces would be used for an evening meeting. Tr. 77-78

4. Brian Donnelly:

Brian Donnelly testified as an expert in land planning and site design. He stated that the property is located on the east side of Zion Road, accessed by a single pipe-stem driveway. There is a concrete side ditch on either side of the entrance road. This site is serviced through water and sewer by an existing water tower and septic in the rear. The septic is sized for the overall capacity, with three extra reserve fields, as required by the Health Department. The adjoining property to the north and to the west is existing parkland. To the south and east are residential properties. Across the street, on the west side of Zion Road, is also a privately owned agricultural parcel. Tr. 63-64.

Mr. Donnelly further testified that the property consists of four existing buildings, with a single drive connecting to a loop system that has front-end parking and parallel parking along the drive aisle. The main building, Building A, is a multi-use building with a gymnasium, stage area, a kitchen, classrooms and administration. The three buildings to the east of that are treatment classrooms and offices. There is also a service and access drive that connects to the rear of the main building. And off that, there is a service loading area, with a small dumpster and some parking in the rear. In that same rear area, there is also a small basketball court. Between Building A and Building B, there is an open pavilion with a post and beam system for outdoor picnics. Around the perimeter of the site, to the north of the main building and to the north of buildings B, C and D, is an open active/passive recreation area, near the septic field, which is maintained in grass and mowed as a typical lawn. Tr. 66-67.

In Mr. Donnelly's opinion, the buildings have a very residential feel to them. "It's a two story slab on gray building with a carport, they've got typical resident windows and siding around the perimeter of, of the, of the building. So it's really got a very residential feel to the, to the campus." Tr. 67-68.

Mr. Donnelly further described the campus. There is a small drop off area at the main entrance to the administration area. The buses would access off of Zion Road and form a loop going clockwise around the paved area and then back out to Zion Road. The water tower and the pump house are immediately to the south of the main building. The water tower provides supply from an onsite well. Tr. 68.

No new development is proposed with this petition. Petitioner is utilizing existing paving and the existing buildings. Technical Staff was concerned because the property is within the Patuxent watershed, an environmentally sensitive area. As an existing development, the subject site was not subject to do any kind of additional storm water management or controls, but Petitioner worked with Technical Staff to try to minimize the impact on this sensitive watershed. Technical Staff wanted to create a vegetative buffer. So, in the lowest portion of the site (the northern area), Park and Planning asked

for an area to be maintained as meadow and not to be mowed more than once a year. Petitioner agreed, and the final Site Plan so reflects. Tr. 69.

Also Technical Staff asked that 30 percent of the impervious area be shaded in order to reduce thermal loading of the paving. Petitioner agreed to add shade trees to reach the 30% threshold, and that commitment is reflected on the Landscape and Shading Plans. Tr. 70-71.

Within the Patuxent watershed, Technical Staff tries to limit a new developments to 10 percent impervious area, while the current impervious area of the subject site is about 16 percent. Tr. 72.

Mr. Donnelly reviewed the Technical Staff's analysis of the inherent and non-inherent adverse effects of the project at this location, and agrees with Technical Staff that there are none. Tr. 73. He also agrees with Technical Staff's conclusion that the subject proposal meets all of the applicable requirements of the zoning ordinance, and in particular, Section 59-G-2.19. Tr. 74.

Mr. Donnelly opined that the subject site is compatible with its surroundings and would have no adverse impacts. Tr. 74-75.

Mr. Donnelly testified that there are 76 existing parking spaces on site, as reflected in the final Site Plan, Exhibit 20(a). Tr. 75. There will also be a total of 14 light poles, each 20 feet tall. Tr. 80. The Photometric study is in Exhibit 9. Tr. 82-83.

Mr. Donnelly identified photographs of campus buildings. Exhibits 7(b),(c), (d) and (g) depict different views of the main building, which was designated Building "A" during the hearing. Exhibits 7(a), (e) and (f) depict different views of Building "B," the "Out" building closest to the main building. Tr. 83-87.

B. People's Counsel

Martin Klauber, the People's Counsel, did not call any witnesses, but he participated in the hearing and strongly supported the Petition.

The People's Counsel summed up his position by saying that "this is so obviously in the public interest of Montgomery County and its residents that it's just redundant for anybody to add anything, . . . and I fully support this special exception and recommend that it be granted with the conditions stated in the Technical Staff Report." Tr. 90-91.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed use will successfully avoid any adverse effects on the community and will meet

the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a private educational institution use. Characteristics of the proposed modifications that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed modification that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

The inherent adverse effects associated with private educational institutions include buildings that have an institutional design dictated by licensing and building code requirements, the parking and traffic associated with the movement of students, faculty and support staff to and from the property, playgrounds and athletic fields, site lighting adequate for safety and security, and the noise and bustle which attends outdoor activities and frequent movement of people on campus. Due to the great variety in the number of children enrolled at various private educational institutions, the size of the buildings, play area and parking facilities will vary considerably, as will the amount of traffic generated. Thus, no particular size or scale can be identified as an inherent characteristic. We must now analyze the subject use to determine whether the requested modifications will produce any non-inherent adverse effects warranting denial of the Petition.

B. Applying the Standard to the Requested Use

As stated by Technical Staff, the proposed special exception “is probably lower in impact than most private education institutions with respect to daily traffic associated with transporting students . . . [and with respect to the] proposed outdoor activities . . .” Technical Staff also notes that Petitioner is able to meet setbacks and is providing fencing and screening of existing vegetation. Staff therefore concludes that “there are no non-inherent adverse effects associated with this application that warrant denial.”

The Hearing Examiner agrees. The proposed use does not share many of the characteristics of educational institutions which can adversely affect a neighborhood, such

as the traffic and queuing often associated with transporting large numbers of students; nor does it have large, noisy athletic fields. Rather than educating great numbers of students on the campus, the student population is small and the ratio of staff to students is very high. Thus, unlike most educational institutions, Petitioner's use of the subject premises is unlikely to create many of the adverse effects on surrounding neighborhood one might anticipate for this type of special exception.

After carefully reviewing the entire record, the Hearing Examiner is convinced, as was the Technical Staff, that the requested use, if properly conditioned, will have no significant adverse effects, inherent or non-inherent, on the surrounding area.

C. General Standards

The general standards for a special exception are found in Zoning Code Section 59-G-1.21(a). The Technical Staff reports and the Petitioner's exhibits and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions:

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Conclusion: Zoning Ordinance §59-C-9.3(h), n.13, provides that "a private educational institution for persons with disabilities may be established [in the RDT Zone] subject to the special exception requirements of section 59-G-2.19, and provided (1) the site was previously used to provide educational services to persons with disabilities, (2) no more than 75 students are enrolled at any one time, (3) enrolled students are not boarded, and (4) improvements exist on the property (as of July 21, 2003) to accommodate the school's educational programs."⁸ Since the subject use meets these criteria, it is permitted in the RDT Zone.

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use would comply with the standards and requirements for private educational institutions set forth in Code §59-G-2.19, as detailed in Part IV.D., below.

⁸ This provision was added by Zoning Text Amendment No. 03-07, which was enacted by Ordinance No. 15-08, effective July 21, 2003, to enable location of this type of facility in the RDT Zone.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The property in question is subject to the Olney Master Plan, approved and adopted in June 1980. As noted by Technical Staff, the Olney Master Plan supports the existing RDT zoning and allows special exceptions, such as the proposed use, in the zone. The key goal of the Plan in this rural area is preserving farmland. Page 33. Continuing the use of the subject site as an educational institution for autistic children will do nothing to threaten the surrounding agricultural and park areas; nor will it adversely impact the few residences in the general vicinity. As stated by Technical Staff, "this location, somewhat removed from residential uses, is appropriate, and the weekday hours, enclosed play area, and site design further enhance compatibility of the use at this site." The Hearing Examiner agrees, finding nothing in the proposed use inconsistent with the applicable Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The proposed use would be in harmony with the general character of the neighborhood. The general and surrounding neighborhood is predominantly parkland and agricultural. The subject site is well set back from the public road along an approximately 800 foot driveway, and it is surrounded by forest. No new structures are proposed, and given the screening and the large campus area devoted to a relatively small number of children, this use should continue to operate in harmony with the neighborhood.

Even with a maximum of 75 students, all on the campus at once, the student density per acre would be less than 8, well below the "87 pupils per acre" referenced in Zoning Ordinance §59-G-2.19(a)(4)a.5. Internal circulation is provided, and vehicles will be able to enter, drop-off or pick-up, park and exit the site with no difficulty utilizing existing facilities. As

noted in Part II. F of this report, the site will not generate enough traffic to warrant a traffic study under LATR.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that, with the specified conditions, the requested special exception would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site. The use has existed on this site for some time with no reports of ill effects, and Petitioner plans no new structures as it takes over the use as the property owner.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: There is no evidence in the record that CSAAC's current operations cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site. The use is primarily a daytime, indoor use, thereby creating a minimum of neighborhood disturbance. All lighting will be shielded and directed, and will thus not create glare onto adjacent properties. Given the size of the CSAAC campus, the proposed student and employee increases are unlikely to change that circumstance. A photometric studies (Exhibits 9) demonstrates that campus lighting will not spill out onto surrounding properties.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff mentions no other special exceptions in the area, and the surrounding area is rural, not residential. The Hearing Examiner finds that the use will not adversely affect the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any*

adverse effects the use might have if established elsewhere in the zone.

Conclusion: The use has been operating in the area for many years without causing these adverse effects. The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

(9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

(i) *If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review[LATR] and the Policy Area Transportation Review[PATR], as required in the applicable Annual Growth Policy.*

(ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: According to Technical Staff, the subject property would continue to be served by adequate public facilities, including public safety services, storm drainage and transportation. Transportation facilities are discussed in Part II. F. of this Report, where we concluded that LATR has been satisfied.⁹ Transportation Planning Staff found that the use will have “no adverse effect on the transportation system,” and that the site has good access, circulation and adequate parking. Mr. Papazian, Petitioner’s transportation expert concluded, “Based upon our examination of the area and based upon the operations of this facility, . . . the access system and the internal circulation system will operate in a safe and efficient manner.” Tr. 29. Based on the evidence, the Hearing Examiner so finds.

⁹ Policy Area Transportation Review (PATR) was abolished effective July 1, 2004. This petition was filed in October of 2004.

D. Specific Standards: Educational Institutions, Private

The specific standards for a private educational institution are found in Code § 59-G-2.19. The Technical Staff report and the Petitioner's exhibits and testimony provide sufficient evidence that the proposed use would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.19. Educational institutions, private.

(a) *Generally. A lot, tract or parcel of land may be allowed to be used for a private educational institution if the board finds that:*

(1) *the private educational institutional use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element which is incompatible with the environment and character of the surrounding neighborhood;*

Conclusion: For the reasons set forth in the General Standards section above, it is clear that the use will not constitute a nuisance because of traffic, number of students, noise, or type of physical activity. The compatibility of the subject use with the environment is also amply demonstrated in the record, as set forth in Part II.E. this Report.

(2) *except for buildings and additions completed, or for which a building permit has been obtained before (date of adoption [April 2, 2002]), the private educational institution must be in a building architecturally compatible with other buildings in the surrounding neighborhood, and, if the private educational institution will be located on a lot, tract, or parcel of land of 2 acres or less, in either an undeveloped area or an area substantially developed with single-family homes, the exterior architecture of the building must be similar to a single-family home design, and at least comparable to any existing homes in the immediate neighborhood;*

Conclusion: As noted by Technical Staff, this provision is not applicable because the buildings existed before the date the provision was adopted, and the property exceeds two acres in area.

(3) *the private educational institution will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community; and*

Conclusion: The surrounding area is agricultural and parkland, not residential, although there are a few residences to the south of the properties long driveway.

The use presently exists on the subject property, but without a special exception since it is owned by the State of Maryland, though operated by Petitioner. Petitioner seeks to continue as the operator when it acquires the property from Maryland, but there is no evidence that this transfer of ownership or the continued use will adversely affect or change the present character or future development of the surrounding neighborhood. Technical Staff concluded that approval of the special exception would have no such impact, and the Hearing Examiner agrees.

(4) the private educational institution must conform with the following standards in addition to the general development standards as specified in Section G-1.23:

- a. Density—The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board considering the following factors:*
 - 1. Traffic patterns, including:*
 - a) Impact of increased traffic on residential streets;*
 - b) Proximity to arterial roads and major highways;*
 - c) Provision of measures for Transportation Demand Management as defined in Section 42A-21 of the Montgomery County Code;*
 - d) Adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter queues of waiting vehicles from spilling over onto adjacent streets; and*
 - 2. Noise or type of physical activity;*
 - 3. Character, percentage, and density of existing development and zoning in the community;*
 - 4. Topography of the land to be used for the special exception; and*
 - 5. Density greater than 87 pupils per acre may be permitted only if the Board finds that (i) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements; (ii) the additional density will not adversely affect adjacent properties; (iii) additional traffic generated by the additional density will not adversely affect the surrounding streets.*

Conclusion: The “pupil density” requested by Petitioner is lower than 8 (75 students on a campus of 9.73 acre campus), well below the 87-per-acre maximum suggested in this provision. The traffic situation has been discussed at length in Part II. F. of this Report, as noted in the discussion of the general standards. The Hearing Examiner concludes that there will be no traffic impact on residential streets because there are none nearby and because the use will not generate much traffic. The subject property is located on Zion Road, which is a rustic road. Technical Staff observed that, given the low student density and the bussing of almost all students, plus staggered arrival of others, it is unnecessary for the school to be located next to an arterial. These factors also make it unnecessary for Petitioner to have a Transportation Demand Management Plan. Drop-off and pick-up areas are adequate, and there is virtually no chance of cars queuing up the length of the 800 foot driveway, all the way to Zion Road. Questions of noise, physical activity and the nature of surrounding development have all been considered in the above discussion of the general standards. The topography of the CSAAC campus has no bearing on the pupil-density issue. Based on all these factors, and the on the analysis of General Development Standards discussed below, the Hearing Examiner concludes, as did Technical Staff, that Petitioner’s proposed cap of 75 students will not create an excessive student density.

- b. *Buffer—All outdoor sports and recreation facilities must be located, landscaped or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into adjacent residential properties. The facility must be designed and sited to protect adjacent properties from noise, spill light, stray balls and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fences and walls.*

Conclusion: The surrounding properties are zoned RDT, which is an agricultural zone, but there are some residences to the south of the pipe-stem driveway. Those residences are quite far away from any existing or planned recreational areas, and the entire facility is screened on all sides by existing mature vegetation. It is also fenced with an existing chain link fence. The recreational facilities (a picnic shelter, a planned playground and a planned nature trail) are closest to the adjacent properties to the north and west. These properties consist of M-NCPPC parkland and vacant property. The size, location, and design of the site protect adjacent properties from any objectionable impacts.

- (b) *If a Private Educational Institution operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv)*

indoor and outdoor recreation programs, or (v) summer day camps, the Board must find, in addition to the other required findings for the grant of a Private Education Institution special exception, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impacts on the community, the Board must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Board.

The Board may limit the number of participants and frequency of events authorized in this section.

Conclusion: Not Applicable. Although Petitioner has mentioned a possible summer enrichment program (Tr. 43), it would not be a summer day camp and the total number of students would still not exceed 75. This possible summer programming would be at levels similar to the programs provided during the rest of the year, and thus it would not vary the traffic situation. Tr. 27.

(c) *Programs Existing before April 22, 2002.*

(1) Where previously approved by the Board, a private educational institution may continue the operation of (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, whether such programs include students or non-students of the school, if the number of participants and frequency of events for programs authorized in 59-G-2.19(b) are established in the Board's approval.

(2) Where not previously approved by the Board, such programs may continue until April 22, 2004. Before April 22, 2004, the underlying special exception must be modified to operate such programs, whether such programs include students or non-students of the school. The Board may establish a limit on the number of participants and frequency of events for authorized programs.

Conclusion: Not Applicable.

(d) *Site plan.*

(1) In addition to submitting such other information as may be required, an Petitioner shall submit with his application a site plan of proposed development. Such plan shall show the size and shape of the subject property, the location thereon of all buildings and structures, the area devoted to parking and recreation facilities, all access roads and drives, the topography and existing major vegetation features, the proposed grading, landscaping and screening plans and such other features necessary for the evaluation of the plan.

Conclusion: Petitioner has submitted such a Site Plan (Exhibits 20(a)), a Landscape Plan (Exhibit 20(b)) and a Shading Plan (Exhibit 20(c)). As noted by the Technical Staff, the plans include the features required by this provision.

(2) No special exception, building permit or certificate of occupancy shall be granted or issued except in accordance with a site plan of development approved by the board. In reviewing a proposed site plan of development the board may condition its approval thereof on such amendments to the plan as shall be determined necessary by the board to assure a compatible development which will have no adverse effect on the surrounding community, and which will meet all requirements of this chapter. Any departure from a site plan of development as finally approved by the board shall be cause for revocation of the special exception, building permit or certificate of occupancy, in the manner provided by law.

Conclusion: Conditions have been recommended in Part V of this report.

(e) *Exemptions. The requirements of Section G-2.19 do not apply to the use of any lot, lots or tract of land for any private educational institution, or parochial school, which is located in a building or on premises owned or leased by any church or religious organization, the government of the United States, the State of Maryland or any agency thereof, Montgomery County or any incorporated village or town within Montgomery County. This exemption does not apply to any private educational institution which received approval by the Board of Appeals to operate a private educational institution special exception in a building or on a lot, lots or tract of land that was not owned or leased by any church or religious organization at the time the Board of Appeal's decision was issued.*

Conclusion: Although the State of Maryland currently owns the property, this Special Exception is being sought because ownership will pass to Petitioner pursuant to a contract with the State.

- (f) *Nonconforming uses. Nothing in this chapter shall prevent any existing private educational institution which obtained a special exception prior to the effective date of this chapter, from continuing its use to the full extent authorized under the resolution granting the respective special exception, subject, however, to division 59-G-4 of this chapter.*

Conclusion: Not Applicable.

- (g) *Public Buildings.*

(1) *A special exception is not required for any private educational institution that is located in a building or on premises that have been used for a public school or that are owned or leased by Montgomery County.*

(2) *However, site plan review under Division 59-D-3 is required for:*

(i) *construction of a private educational institution on vacant land owned or leased by Montgomery County;*
or

(ii) *any cumulative increase that is greater than 15% or 7,500 square feet, whichever is less, in the gross floor area, as it existed on February 1, 2000, of a private educational institution located in a building that has been used for a public school or that is owned or leased by Montgomery County. Site plan review is not required for: (i) an increase in floor area of a private educational institution located in a building that has been used for a public school or that is owned or leased by Montgomery County if a request for review under mandatory referral was submitted to the Planning Board on or before February 1, 2000, or (ii) any portable classroom used by a private educational institution that is located on property owned or leased by Montgomery County and that is in place for less than one year.*

Conclusion: Not Applicable.

- (h) *Applications filed before May 6, 2002. Any application filed before May 6, 2002 for a private educational institution special exception or modification of a private educational institutional special exception must comply with the requirements of Article 59-G and Article 59-E in effect at the time the special exception was filed.*

Conclusion: Not Applicable.

E. Additional Applicable Standards

59-G § 1.23. General development standards

- (a) ***Development Standards.** Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The following chart from the Technical Staff Report (Exhibit 19), demonstrates compliance with all development standards for the RDT Zone:

Table 1 – Conformance with Applicable Development Standards S-2626		
Development Standard	Requirement	Proposal
Front Yard Setback	50'	51'
Side Yard Setback	20'	87'
Sum of Both Sides	40'	170'
Rear Yard Setback	35'	48'
Lot Area	40,000 sq. ft.	9.73 ac.
Lot Width @ Street	25'	Appx 105'
Lot Width @ Front Bldg Line	125	Appx. 630'
Building Height	50'	3 stories (≈35 ft.) ¹⁰
Building Coverage	10% or 42,384 sq.ft.	5.3% or 22,370 sq. ft.
Parking	1/employee = 48	76 ¹¹

- (b) ***Parking requirements.** Special exceptions are subject to all relevant requirements of Article 59-E.*

¹⁰ Technical Staff erroneously listed the tallest building as 2 stories; it is actually 3 stories. Tr. 84 and Site Plan.

¹¹ Technical Staff listed 51 parking spaces, but the Site Plan shows 76, and Petitioner's Land Planner, Brian Donnelly, testified there were 76 spaces. Tr. 75.

Conclusion: Zoning Ordinance §59-E-3.7 requires that private educational institutions provide “[o]ne parking space for each employee, including teachers and administrators, plus sufficient off-street parking space for the safe and convenient loading and unloading of students, plus additional facilities for all student parking.” Because Petitioner’s plans call for a maximum of 48 employees, 48 parking spaces are required. In addition, a safe place to load and unload students is provided in front of the main building (Building A). There is no need for a student parking facility because students generally do not drive themselves to the subject school. Should some student parking spaces be needed, there are 28 spaces on campus in addition to the 48 required for employees.

(c) **Minimum frontage.** *In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*

- (1) *Rifle, pistol and skeet-shooting range, outdoor.*
- (2) *Sand, gravel or clay pits, rock or stone quarries.*
- (3) *Sawmill.*
- (4) *Cemetery, animal.*
- (5) *Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.*
- (6) *Riding stables.*
- (7) *Heliport and helistop.*

Conclusion: The minimum lot width at the street line (Zion Road) is 25 feet in the RDT Zone. The subject lot is 105 feet in width at the street line.

(d) **Forest conservation.** *If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: As stated in Part II.E. of this report, Environmental Planning Division granted Petitioner an exemption from the Forest Conservation Requirements of Chapter 22A (Exhibit 5).

(e) **Water quality plan.** *If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special*

exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

Conclusion: The Department of Environmental Protection gave Petitioner a waiver from water quantity (flow rate) requirements. Exhibit 17(a). With respect to water quality, Petitioner agreed to Technical Staff's suggestion that they plant shade trees to reduce the thermal loading on impervious surfaces, as shown in its Shading Plan (Exhibit 20(c)). The Hearing Examiner has recommended making the planting of these trees a condition of the special exception.

(f) **Signs.** *The display of a sign must comply with Article 59-F.*

Conclusion: There is an 8 foot by 4 foot illuminated sign (Exhibit 13(c)) located at the entrance to Petitioner's driveway. Petitioner notified the Hearing Examiner (Exhibit 30) that it was unable to locate any record of a sign permit for the sign and suggested that obtaining a sign permit be made a condition of the special exception, if granted. The Hearing Examiner agrees, and that condition is recommended in Part V of this report. Zoning Ordinance §59-F-4.2(d)(3) permits an illuminated Entrance Sign, not exceeding 40 square feet, in a rural zone, and therefore Petitioner's 32 square foot sign should qualify.

(g) **Building compatibility in residential zones.** *Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: Not applicable.

(h) **Lighting in residential zones.** *All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

(1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*

(2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: This section technically does not apply, since the RDT Zone is not a residential zone. Nevertheless, Petitioner's photometric study (Exhibit 9) demonstrates that Petitioner's lighting will not create excessive glare outside the subject site.

Based on the testimony and evidence of record, I conclude that the use proposed by Petitioner meets the specific and general requirements for the special exception, and that the Petition should be granted, with the conditions recommended in the final section of this report.

V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition numbered S-2626, which seeks a special exception for a private educational institution operated by Community Services for Autistic Adults and Children (CSAAC), at 21515 Zion Road in Brookville area of North Olney, Maryland, be ***granted*** with the following conditions:

9. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
10. Enrollment at subject site shall not exceed seventy-five students, and their ages, in general, shall range between two and twenty-one years.
11. The number of employees and staff assigned to the subject site shall not exceed forty-eight.
12. The hours for educational activities are restricted to 9:30 a.m. through 4:00 p.m., Monday through Friday; however, occasional evening or weekend meetings, primarily involving the PTA, the PTO or other related programs and/or services, are permitted. These meetings reportedly average one per month.
13. Faculty and other employees of the school may be on the premises between the hours of 8:30 a.m. and 6:30 p.m., Monday through Friday, as well as for occasional evening or weekend functions.
14. The site shall be limited to the current level of impervious surface, as shown on the Site Plan, Exhibit 20(a).
15. Petitioner shall add and maintain the new shade trees depicted on the revised Landscape Plan (Exhibit 20(b)) and the revised Shading Plan (Exhibit 20(c)).
16. Petitioner shall obtain a permit for its four foot by eight foot illuminated entrance sign, or for a substitute sign, if one is required by the Sign Review Board or the Department of Permitting Services.

Dated: March 21, 2005

Respectfully submitted,

Martin L. Grossman
Hearing Examiner

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF:

**COMMUNITY SERVICES FOR AUTISTIC
ADULTS AND CHILDREN (CSAAC)**

Petitioner

Edward Papazian

Kathryn Roland

Ian Paregol

Brian J. Donnelly

For the Petitioner

S-2626

C. Robert Dalrymple, Esquire

05-16)

Attorney for the Petitioner

Martin Klauber, Esquire, People's Counsel

In Support of the Petition

Before: Martin L. Grossman, Hearing Examiner

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Board of Appeals No.

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**HEARING EXAMINER'S SUPPLEMENTAL REPORT AND
RECOMMENDATION**

I. BACKGROUND OF REMAND ORDER

On October 1, 2004, Petitioner, Community Services for Autistic Adults and Children (CSAAC), filed Petition S-2626, OZAH #05-16, for a Private Educational Institution Special Exception under Code §59-G-2.19, to allow continued use by private owners of a facility that has been owned by the State of Maryland, and therefore did not require a special exception. The subject site is located at 21515 Zion Road in the Brookville area of Northern Olney. A public hearing was held on February 7, 2005, as scheduled, and the record closed on February 17, 2005. The Hearing Examiner's report was timely submitted to the Board of Appeals (the "Board") on March 21, 2005.

In a resolution dated April 6, 2005, but not filed with the Office of Zoning and Administrative Hearings until April 28, 2005, the Board of Appeals remanded CSAAC's petition to the Hearing Examiner to "clarify the boundaries of the special exception neighborhood." (Exhibit 34).

The Hearing Examiner finds that neither an additional hearing, nor additional evidence from the Petitioner is needed to respond to the Board's remand question. That question is addressed in Part II, below.

II. THE BOARD'S QUESTION

As noted, the Board remanded this matter to "clarify the boundaries of the special exception neighborhood." Technical Staff described the general neighborhood on page 2 of its report in the following manner:

The site is located on the east side of Zion Road and the complex is set back from the road approximately 1,600 feet with access via a pipe stem driveway. The north of the site is Sundown Road and Gregg Road. The site is located in an area of agricultural and open space land uses and partially surrounded by parkland. Some lots with residential use abut the pipe stem driveway.

The Hearing Examiner described the general neighborhood on page 4 of his report as follows:

The site is located on the east side of Zion Road, in the Northern Olney area, and the complex is set back from the road and accessed via an approximately 800 foot long "pipe stem" driveway. The site, which was once a Nike missile facility, is located in an area of agricultural and open space land uses, and it is partially surrounded by the Rachel Carson Conservation Park. Gregg Road is about 250 feet south of the driveway entrance on Zion Road, and Sundown Road is about a mile to the north. Some lots with residential use abut the pipe stem driveway. All the surrounding property is in the RDT zone. The subject site and the neighborhood can be seen on the Planimetric Map from Exhibit 22 [which was also shown in the report] [Footnotes omitted.]

Although the general neighborhood is certainly described above, neither the Hearing Examiner's report nor the Technical Staff report set specific boundaries, and that is apparently the information sought by the Board.

At the hearing, the issue of specific neighborhood boundaries was discussed during the testimony of Petitioner's land use expert, Brian Donnelly, and the following colloquy took place (Tr. 64-66):

MR. GROSSMAN: And what would you outline as the surrounding, or the defined neighborhood for this?

MR. DONNELLY: I'd probably define the neighborhood, you know, roughly from here, on the, I'd say the, north boundary of Plot 41, the east side of Zion Road, and then across the north boundary of CSAAC property, then extending to the east, covering the lots within Gray [sic]¹² Court, then running west along Gray [sic]¹³ Court and then back

¹² Mr. Donnelly actually testified to "Gregg Court," a north-south roadway, southeast of the subject site. The court reporter apparently misunderstood him.

¹³ Same as footnote 1.

onto Zion Road, and then along the, the north end of Zion Road, to close the, close the, the hexagon, I guess –

MR. GROSSMAN: Well would this site really have an effect on that far to the east –

MR. DONNELLY: Well I just included that because it was similar residential properties, it's got the same character, same lot size, same as, as the subject property.

MR. GROSSMAN: But you wouldn't expect this lot to have an impact that far to the –

MR. DONNELLY: No.

MR. GROSSMAN: -- west?

MR. DONNELLY: I was just describing what I would call the general, you know, the overall neighborhood that would be part of this parcel.

MR. GROSSMAN: All right.

MR. KLAUBER: Can I just help out for a second? Have you read the Technical Staff Report?

MR. DONNELLY: Yes.

MR. KLAUBER: Have you seen what the Technical Staff has down for the site neighborhood description?

MR. DONNELLY: I've read about it, I don't recall the boundaries off the top of my head.

MR. KLAUBER: There are no, there are no boundaries, are there?

MR. DONNELLY: No.

MR. KLAUBER: Why aren't there, why, why is there a need to have a defined boundary in a special exception case?

MR. DONNELLY: I, I don't know that there's necessarily a need to, to really define the boundary with a hard line. I, I guess I was trying to describe how, you know, similar residential properties, in essence, typically how a neighborhood is defined, in a typical case.

MR. KLAUBER: So you're saying that in a special exception case, there is no such thing as defined neighborhood because it's not necessary to define neighborhood when you're looking at the impact of a requested special exception as contrary, as to a defined neighborhood used in the Klitian [*sic*]¹⁴ rezoning case?

MR. DONNELLY: That would be correct.

MR. KLAUBER: Thank you.

It is evident from this exchange that both the People's Counsel and the Petitioner's land use expert feel that defined neighborhood boundaries, though required in a Euclidian rezoning case, are not necessary in a special exception case. Even in Euclidean rezoning cases, where a "defined neighborhood" with discreet boundaries is required, *Border v. Grooms*, 267 Md. 100, 110, 297 A.2d 81, 86 (1972), the courts have held that "[t]he concept of a neighborhood is a flexible one, and will vary according to the geographical location involved. However, it is clear that in a rural or semirural area, the neighborhood is going to be larger and more fluid than in a city or suburban area." *Montgomery v. Board of County Commissioners for Prince George's County*, 263 Md. 1, 7-8, 280 A.2d 901, 903 (1971).

Of course, the subject site is located in a rural area, making the whole concept of neighborhood, in the sense used by Zoning Ordinance §59-G-1.2.1, much more difficult to define in precise terms. Defining a neighborhood, even in an urban or suburban setting, is a debatable proposition, because the ripple effects of development, though diminished with distance, may continue to be felt beyond the boundaries. Perhaps that is why the Zoning Ordinance does not specifically call for defined boundaries to a neighborhood in special exception cases, but rather instructs the Board to "*consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location*" §59-G-1.21 [Emphasis supplied.]

In sum, the notion of applying defined boundaries to general neighborhoods is an artificial construct which should be utilized cautiously in special exception cases, especially in rural areas. Nevertheless, because the Board seeks such boundaries in this case, the Hearing Examiner finds that the following boundaries to the general neighborhood are the most reasonable, under the circumstances: On the north, the northern border of Parcel 41, on the west side of Zion Road, and, on the east side of Zion Road, the parkland up to the northern border of Parcel 41 (based on an imaginary line extended from that northern border across Zion Road); on the east, the adjacent properties' lot lines furthest from the subject site; on the south, Gregg Road and an imaginary line extended across Zion Road (as if Gregg Road continued across); and on the west, the furthest lot lines of the confronting properties across Zion Road.

The boundary is the same as recommended by Petitioner's land use expert on the southern end. It differs a bit on the north, east and west. On the north, the Hearing

¹⁴ Mr. Klauber obviously was referring to Euclidian rezoning, and the court reporter, being unfamiliar with the term, heard it as "Klitian," a term yet to reach modern dictionaries. Then again, perhaps she was thinking of Klaus von Klitzing, a German physicist who was awarded the 1985 Nobel prize in physics for developing a precise way to measure electrical resistance.

Examiner included about 300 feet of parkland, to account for the possibility of a small impact on the park from the well-buffered CSAAC facility. On the east, the Hearing Examiner recommended a less distant boundary than did Mr. Donnelly, who admitted that his recommended boundary would have extended the general neighborhood further to the east than the reach of any actual impact from the special exception (Tr. 64-65). On the west, Mr. Donnelly chose Zion Road as the boundary. The Hearing Examiner believes the boundary should go across Zion Road to include the confronting landowners, who may feel the small impact of traffic from the facility.

III. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition numbered S-2626, which seeks a special exception for a private educational institution operated by Community Services for Autistic Adults and Children (CSAAC), at 21515 Zion Road in Brookville area of North Olney, Maryland, be ***granted***, with the conditions specified in my initial report and recommendation.

Dated: May 2, 2005

Respectfully submitted,

Martin L. Grossman
Hearing Examiner